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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,238	01/29/2002	Mechteld Geertruida Maria Rutten	702-011472	6232
7590	04/29/2004			EXAMINER PASCUA, JES F
Richard L Byrne 700 Koppers Building 436 Seventh Avenue Pittsburgh, PA 15219-1818			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/937,238	RUTTEN, MECHTELD GEERTRUIDA MARIA	
	Examiner	Art Unit	
	Jes F. Pascua	3727	

*The MAILING DATE of this communication appears on the cover sheet with the correspondence address.*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 18 March 2004.  
2a)  This action is **FINAL**.                    2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 12-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 12-21 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 12-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed fails to antecedent basis for the flexible material being provided with "a pull engagement portion". This is a new matter rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12, 13, 14, 16, 17, 18, 19, 20 and 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Strenger.

5. Claims 12, 13, 15, 17, 19, 20 and 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Heyden.

***Response to Arguments***

6. Applicant's arguments filed 02/23/04 have been fully considered but they are not persuasive.

Applicant's remark that the container of the Strenger patent "does not include an engagement portion position in the part of the package configured to envelope the packaged product, as specifically set forth in all of independent claims 12, 20 and 21" is considered to be opinion. The seal 25 of Strenger clearly meets this recitation.

The Examiner disagrees with applicant's remark that the seal 25 of Strenger does not extend the width of the package. Clearly, the seal 25 of Strenger extends a width of the package. Since applicant's claims do not specifically require the seal to extend the entire width of the package, the seal 25 of Strenger extending only a portion of the entire width of the package sufficiently meets applicant's claims. Furthermore, it appears that applicant considers seal 25 of Strenger to be the only seal that is similar to applicant's claimed seal. Applicant's interpretation of Strenger is unnecessarily narrow. The seal 18 at the bottom end of the Strenger package is made up of at least two major components, permanent seals 20 and weakly sealed area 25. Combined, seals 20, 25 extend the entire width of the package. There is nothing to preclude such a seal structure from anticipating applicant's claims.

Regarding applicant's argument that the permanent seals 20 and weak seal 25 do not provide a "pull engagement portion", Strenger discloses that when oppositely directed forces are applied, the walls of the package are "pulled apart at the location of the arcuate seal 25". See column 5, lines 23-29. Applicant's newly claimed "pull engagement portion" is, therefore anticipated by Strenger. Moreover, in response to applicant's remark that the recitation of a "pull engagement portion", in the claims, "indicates that a user must be able to grasp the sidewalls of the container in the area of the engagement portion and pull the package apart", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Applicant remarks that the package of Heyden does not include "a pull engagement portion position in the part of the package configured to envelope the packaged product, as specifically set forth in independent claims 12, 20 and 21 of the present invention." Applicant's remark is unfounded. The seals that form the pockets 40, 66, 82, 96 and 122 in Heyden clearly extend below the top seals 24, 64, 72, 92 and 116, 118 which define the upper limits of the part of the package configured to envelope the packaged product. Applicant's recitation of "a pull engagement portion is positioned in the part of the package configured to envelope the packaged product" is met by

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Heyden to the same degree applicant defines "the part of the package configured to envelope the packaged product" in the claims.

### ***Conclusion***

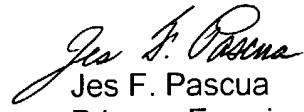
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP